

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
Nashville Division**

TIFFANY R. HENDERSON,

Plaintiff,

v.

No.: _____

ATKINS NORTH AMERICA, INC.

JURY DEMANDED

Defendant.

COMPLAINT

PLAINTIFF, Tiffany R. Henderson, brings this action against the Defendant and alleges as follows.

I. PARTIES, JURISDICTION, AND VENUE

1. This case arises under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*
2. The Court has subject matter jurisdiction pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b) and 28 U.S.C. § 1337. The Court has personal jurisdiction over the Plaintiff, a resident of Mt. Pleasant, Tennessee and the Defendant, who does business in Davidson County, Tennessee.
3. Venue also lies in the Middle District of Tennessee, pursuant to 28 U.S.C. § 1391, because the Defendant does business in this district, and a substantial part of the alleged events or omissions giving rise to this action occurred in this district.
4. Plaintiff worked for Atkins North America, Inc. (hereinafter “Defendant”) at a location in Nashville, Tennessee. During her employment with Defendant, she was a covered employee under the FLSA.

5. The Defendant is a covered “employer” under the FLSA.

II. FACTUAL BASIS FOR SUIT

6. Plaintiff is a long-time employee of Defendant. Plaintiff worked for Defendant for approximately eighteen (18) years, ending in January of 2014.

7. During the course of Plaintiff’s employment with Defendant, Defendant classified Plaintiff as an exempt employee for purposes of the overtime provisions of the Fair Labor Standards Act.

8. During Plaintiff’s employment, Plaintiff performed work in excess of forty (40) hours per week on a regular and repeated basis.

9. Under the Fair Labor Standards Act, “overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed” during the first forty (40) hours of work. 29 C.F.R. § 778.107.

10. When Plaintiff worked more than forty (40) hours during a week, Defendant did not compensate Plaintiff at a rate of “one and one-half times the regular rate at which [the Plaintiff was] actually employed” for the first forty (40) hours of work. *See* 29 C.F.R. § 778.107.

11. Contrary to Defendant’s assertion that Plaintiff as an “exempt” employee under the FLSA, Plaintiff’s primary job duties were not those of an exempt employee.

12. Defendant’s failure to pay Plaintiff overtime wages is a willful violation of the FLSA. Indeed, Plaintiff informed Defendant of its non-compliance with the FLSA, yet Defendant failed to pay Plaintiff the overtime wages owed.

13. Defendant is unable to bear its “substantial burden” of showing its failure to comply with the FLSA was in good faith and predicated on reasonable grounds. *Laffey v. Northwest Airlines*, 567 F.2d 429, 464 (D.C. Cir. 1976); 29 U.S.C. §216(b); 29 U.S.C. §260.

IV. CAUSES OF ACTION

14. The forgoing facts are incorporated by reference as if fully stated herein.

15. Plaintiff brings the following claim against Defendant:

Failure to pay overtime wages in violation of the Fair Labor Standards Act.

16. Plaintiff demands a jury.

VI. PRAYER FOR RELIEF

17. A declaratory judgment that Defendant has violated the overtime provisions of the FLSA;

18. A declaratory judgment that Defendant's violations of the FLSA were willful;

19. An award to Plaintiff of damages in the amount of unpaid overtime compensation to be proven at trial;

20. An award to Plaintiff of liquidated damages in an amount equal to the overtime compensation shown to be owed to her pursuant to 29 U.S.C. § 216(b);

21. An award to Plaintiff of reasonable attorneys fees and costs, pursuant to 29 U.S.C. § 216(b); and

22. An award of such other and further legal and equitable relief as may be appropriate.

Respectfully submitted,

GILBERT RUSSELL McWHERTER PLC

/s/ Michael L. Russell

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